

FCC MAIL SECTION

~~JUN 25 11 54 AM '97~~ Federal Communications Commission

DA 97-1269

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Glen Rose and Stamford, Texas))
)
)
)
)
)
)MM Docket No. 97-145
RM-9091**NOTICE OF PROPOSED RULE MAKING****Adopted: June 11, 1997****Released: June 20, 1997**

Comment Date: August 11, 1997

Reply Comment Date: August 26, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Cleburne Radio, Inc. ("petitioner"), licensee of Station KCLE-FM, Channel 221C2, Glen Rose, Texas, requesting the substitution of Channel 221C1 for Channel 221C2 at Glen Rose and modification of Station KCLE-FM's license to specify operation on the higher powered channel. In order to accommodate the upgrade at Glen Rose, petitioner also requests the substitution of Channel 295A for Channel 221C2 at Stamford, Texas, and modification of M & M Broadcasting Company's (M & M Broadcasting") construction permit to specify the Class A channel.¹ Petitioner states it will apply for Channel 221C1 at Glen Rose, if allotted.

2. We believe petitioner's proposal warrants consideration since it would enable Station KCLE-FM to expand its coverage area. Channel 221C1 and Channel 295A can be allotted to Glen Rose and Stamford, Texas, respectively, in compliance with the Commission's

¹ On March 26, 1997, the Commission granted an application for assignment of the construction permit on Channel 221C2 (File No. BAPH-970204GE) for a new station at Stamford, Texas, from Blue Plains Broadcasting Company to M & M Broadcasting, consummated on April 4, 1997. Petitioner states that M & M Broadcasting and Cleburne Radio, Inc. are under common ownership and control and has provided a copy of M & M Broadcasting's statement of consent which indicates its willingness to change transmitter site and channel at Stamford in order to accommodate Station KCLE-FM's upgrade.

minimum distance separation requirements at the sites specified by the petitioner.²

3. As requested, we shall propose to modify the license of Station KCLE-FM at Glen Rose, Texas, to specify operation on Channel 221C1. In accordance with Section 1.420(g) of the Commission's Rules we will not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Glen Rose, Texas.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Glen Rose, Texas	221C2	221C1
Stamford, Texas	221C2 ³	295A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before _____, 1997, and reply comments on or before _____, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John J. McVeigh
Bernstein and McVeigh
1818 N Street
Suite 700

² The coordinates for Channel 221C1 at Glen Rose, Texas, are 32-16-30 NL and 98-08-30 WL. The coordinates for Channel 295A at Stamford, Texas, are 32-58-21 NL and 99-48-32 WL.

³ Blue Plains Broadcasting, former permittee of the Channel 221C2 construction permit at Stamford, filed an application to downgrade the allotment (File No. BMPH-970225IC). In the event, this construction permit is modified to Channel 295A in this proceeding, the pending application will be dismissed.

Washington, D.C. 20036
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who

filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.